

EXHIBIT A-1

Gordon, Ben

From: Greenspan, David
Sent: Tuesday, October 16, 2018 6:43 PM
To: Stephen S. Zashin; Kessler, Jeffrey L.; Amoona, Jonathan; Mercier-Dalphon, Isabelle; Gordon, Ben
Cc: David R. Vance; Patrick J. Hoban
Subject: RE: Johnson/NFLPA
Attachments: Oct. 16, 2018 Letter to Mr. Zashin.pdf; Attachment to Oct. 16, 2018 Letter to Mr. Zashin.pdf

Stephen—

A letter (and enclosures) setting forth the NFLPA's position is attached. Once you have had a chance to review, please let us know how you would like to proceed from here.

Thanks.

From: Greenspan, David
Sent: Tuesday, October 16, 2018 11:26 AM
To: 'Stephen S. Zashin' <ssz@zrlaw.com>; Kessler, Jeffrey L. <JKessler@winston.com>; Amoona, Jonathan <JAmoona@winston.com>; Mercier-Dalphon, Isabelle <IMercier@winston.com>
Cc: David R. Vance <drv@zrlaw.com>; Patrick J. Hoban <pjh@zrlaw.com>
Subject: RE: Johnson/NFLPA

We will send you a letter setting forth the NFLPA's position today. Thanks.

From: Stephen S. Zashin [<mailto:ssz@zrlaw.com>]
Sent: Tuesday, October 16, 2018 11:25 AM
To: Kessler, Jeffrey L. <JKessler@winston.com>; Amoona, Jonathan <JAmoona@winston.com>; Mercier-Dalphon, Isabelle <IMercier@winston.com>; Greenspan, David <DGreenspan@winston.com>
Cc: David R. Vance <drv@zrlaw.com>; Patrick J. Hoban <pjh@zrlaw.com>
Subject: Johnson/NFLPA

All:

We have consulted with the NFL and are putting together a joint letter per Judge Sullivan's order. Please provide us with a paragraph concerning the NFLPA's position in the above referenced matter or let us know if you would like to have a phone call prior to Thursday. Given Thursday's deadline, please provide us with the courtesy of a response no later than 5pm today.

Stephen



Stephen S. Zashin

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October 16, 2018

VIA EMAIL

Stephen S. Zashin, Esq.
Zashin & Rich Co., L.P.A.
950 Main Ave., 4th Floor
Cleveland, Ohio 44113

Re: *Johnson v. National Football League Players Association, et al.*, Case No. 1:17-cv-05131-RJS

Dear Mr. Zashin:

I write on behalf of the NFLPA regarding the Court's Memorandum and Order Regarding the NFLPA's Motion to Dismiss, issued on October 3, 2018, ECF No. 125 (the "Order"). In its Order, the Court asked the parties to "submit a joint letter to the Court no later than Thursday, October 18, 2018 regarding proposed next steps with respect to Plaintiff's remaining LMRDA claim..." Order at 21.

The Court described Johnson's LMRDA claim as follows: "Johnson alleges that the NFLPA refused to provide all side agreements that modified the 2015 [Performance Enhancing Substances] Policy" (the "2015 Policy"). *Id.* at 16.¹ The Court held that even if Mr. Johnson could ultimately prevail on that claim, the "only relief to which Johnson would be entitled is a copy of

¹ See also First Am. Compl. ¶ 310, ECF No. 39. Mr. Johnson further alleged that "[t]he NFLPA never provided players the version of the 2015 Policy it claimed applied to Johnson. Instead, the NFLPA placed a different version of the 2015 Policy on the NFLPA's website, which it never changed. Despite substantial modifications to the 2015 Policy, the NFLPA did not update the 2015 Policy available on its website or otherwise notify its player-members of the modifications." FAC ¶ 312. "To this day, the NFLPA has not apprised Johnson of the entirety of the terms of the 2015 Policy." *Id.* ¶ 313. In Mr. Johnson's Memorandum of Law in Opposition to Defendant NFLPA's Motion to Dismiss ("Johnson Opposition"), he confirmed that the only documents at issue with regard to his LMRDA claim are any "modifications to the collectively bargained 2015 Policy." ECF No. 112 at 29. And, "[s]pecifically, the NFLPA refused to share with Johnson...purported modifications to the collectively bargained 2015 Policy. . . . The NFLPA provides a website, which it claims includes the Policy . . . but that link is to a newer policy (*not* the Policy applicable here)." *Id.* (emphasis added).

the agreement and side letters in question.” *Id.* at 17 n.3. And, further, that Mr. Johnson’s LMRDA claim would become “moot once [he] has received a full copy of the collective bargaining agreement—even if that receipt occurred during the course of litigation” and that, here, “Johnson maintains that he has still not received a copy of all side agreements.” *Id.* at 17.

Although the Court held that Johnson pleaded enough facts to plausibly state a viable LMRDA claim, the NFLPA maintains that it has satisfied all of its duties under the LMRDA, and that Mr. Johnson’s claim lacks merit and would ultimately fail. But the NFLPA wishes to end litigation with one of its members and to save further litigation costs both for itself and for Mr. Johnson. Accordingly, the NFLPA is producing to Mr. Johnson a complete copy of the 2015 Policy and all agreements thereunder that are the subject of Mr. Johnson’s First Amended Complaint (including Side Letters and modifications to the 2015 Policy). As you will see from the production, not all documents contained therein necessarily constitute agreements or modifications to the 2015 Policy, but we have erred on the side of over-inclusiveness. For the avoidance of doubt, the NFLPA does not believe that there are any other documents that it would be ordered to produce even if Mr. Johnson were to prevail on his LMRDA claim. For example, with respect to the Court’s observation that, according to Mr. Johnson’s allegations, “the NFLPA has still not produced a copy of the side agreement relating to the bargaining parties’ interpretation of the timeline for reasonable-cause testing” (Order at 17), no such side agreement has been produced because there never was any such agreement.²

The NFLPA believes that Mr. Johnson previously received all of the documents included in the NFLPA’s production. Nonetheless, we need not debate what documents Mr. Johnson previously received because today’s production would in any event moot his LMRDA claim. Please let us know whether or not Mr. Johnson will jointly stipulate with the NFLPA to dismiss the LMRDA claim. If he will not, then please let us know Mr. Johnson’s position about next steps in the litigation. In the event Mr. Johnson does not agree that his claim is now moot, the NFLPA’s present intention would be to promptly move for summary judgment on the basis of today’s document production. It is the NFLPA’s sincere hope that we can agree to put this litigation behind us.

Very truly yours,

/s/ David L. Greenspan

David L. Greenspan

cc: Jeffrey L. Kessler, Esq.

² As Arbitrator Carter explained in the October 11, 2016 Arbitral Award, and as Dr. Lombardo testified at the hearing, the interpretation of the timeline for reasonable-cause testing was left to Dr. Lombardo’s discretion. Arb. Award at ¶ 6.15, 6.19; Arb. Hearing. Tr. 170:4-171:9.